

STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
COMMISSIONER OF TAXATION AND FINANCE  
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, section 475 (not subdivided), subdivision (7) of section 509, subsection (a) of section 697, subsection (a) of section 1096, subdivisions (1) and (8) of section 1142, section 1250 (not subdivided), and subdivision (a) of section 1415 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I; the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I; the Corporate Tax Procedure and Administration Regulations, as published in Subchapter D of Chapter I; the Cigarette Tax, Cigarette Marketing Standards and Tobacco Products Tax Regulations, as published in Subchapter I of Chapter I; the New York State Personal Income Tax Under Article 22 of the Tax Law Regulations, as published in Subchapter A of Chapter II; the Motor Fuel and Diesel Motor Fuel Tax Regulations, as published in Subchapter A of Chapter III; the Truck Mileage and Fuel Use Taxes Regulations, as published in Subchapter C of Chapter III; the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV; the Real Estate Transfer Tax Regulations, as published in Subchapter B of Chapter IV; and the Procedural Regulations, as published in Chapter IX of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, the amendments to read as follows:

Section 1. Section 7-3.7, excluding the example which remains unchanged, of such regulations is amended to read as follows:

Section 7-3.7 Interest on certain installments based on preceding year's tax. (Tax Law, section 213-b(e)) If the amount paid pursuant to section [7-3.3] 213-b(a) of [this Subpart] the Tax Law exceeds the tax shown on the report required to be filed by the taxpayer for the taxable year for which the amount was paid, interest will be allowed and paid on the amount by which the amount paid [pursuant to section 7-3.3 of this Subpart] exceeds the tax. Interest will be paid at the overpayment rate or rates set by the [Tax Commission in] Commissioner of Taxation and Finance pursuant to section [2393.3] 1096(e) of the Tax Law (see Part 2393 of this Title) or, if no rate is set, at the rate [of six percent per year] specified in section 213-b(e) of the Tax Law from the date of payment of the amount to the 15th day of the third month of the succeeding taxable year. However, no interest will be allowed or paid if the excess is less than one dollar or if the interest becomes payable solely because of the carry-back of a net operating loss from a subsequent taxable year.

Section 2. Section 22-3.7, excluding the example which remains unchanged, of such regulations is amended to read as follows:

Section 22-3.7 Interest on certain installments based on the preceding year's tax. (Tax Law, section 1461(e)) If the amount paid pursuant to section [22-3.3] 1461(a) of [this Subpart] the Tax Law exceeds the tax shown on the return required to be filed by the taxpayer for the taxable year for which the amount was paid, interest will be allowed and paid on the amount by which the amount paid [pursuant to section 22-3.3 of this Subpart] exceeds the tax. Interest will be paid at the overpayment rate or rates set by the [Tax Commission in] Commissioner of Taxation and Finance pursuant to section [2393.3] 1096(e) of the Tax Law (see Part 2393 of this Title) or, if no rate is set, at the rate [of six percent per year] specified in section 1461(e) of the Tax Law from the date of payment of the amount to the 15th day of the third month of the succeeding taxable year. However, no interest will be allowed or paid if such interest is less than one dollar.

Section 3. Section 38.2 of such regulations is amended to read as follows:

Section 38.2. Unwarranted reduction in utility costs in an empire zone (formerly, economic development zone). (Tax Law, section 1085(m)) If during a taxable year a taxpayer has received a reduction in the rate charged for gas, electricity, steam, or water sold, or gas, electric, steam, or water service rendered, pursuant to [Part 505 of this Title] section 186-a(8) of the Tax Law, based upon a certification as to the claiming of a credit under section 210(19), section 1456[(a)](e), or section 1511(g) of the Tax Law, and it is finally determined that such taxpayer is not entitled to such credit in any part, such taxpayer shall pay a penalty in an amount equal to such reduction in cost, with interest from the last day of such year at the underpayment rate prescribed in section 1096(e) of the Tax Law (see Part 2393 of this Title). The Commissioner of Taxation and Finance has the power, in his or her discretion, to waive, reduce, or compromise such penalty. For purposes of this section, the term “finally determined” means a determination made final when all administrative remedies have been exhausted and the determination is no longer subject to judicial review.

Section 4. Paragraphs (1) through (3) and the example in subdivision (a) of section 78.3 of such regulations are REPEALED, and subdivision (a) is further amended to read as follows:

(a) In lieu of the penalties described in section 78.1 and the interest described in section 78.5 of this Part, if the failure to pay any tax on or before the prescribed date for payment is attributable to fraud, [there] the penalty and interest prescribed in section 481(1)(a)(iv) of the Tax Law will be added to the tax[:].

Section 5. Subdivision (b) of section 78.3 of such regulations is REPEALED, and subdivision (c) of such section is relettered subdivision (b).

Section 6. Subdivision (b) of section 78.5 of such regulations is amended to read as follows:

(b) The underpayment rate of interest is set by the Commissioner of Taxation and Finance pursuant to the provisions of subdivision twenty-sixth of section 171 of the Tax Law[, but shall not be less than six percent per annum]. Such rate will apply to the tax or any portion thereof [which] that remains or becomes due on or

after the date on which such rate becomes effective and applies only for the period during which such rate is in effect. [For the rate of interest applicable to underpayments on which interest is payable for any period of time prior to September 1, 1989, see section 2393.2 of this Title.] For information regarding the underpayment rate of interest [applicable to any period or periods on or after September 1, 1989], see [section 2393.1(e)] Part 2393 of this Title.

Section 7. Paragraph (1) of subdivision (a) of section 185.3 of such regulations is amended to read as follows:

(1) General. (i) Except as otherwise provided in [this] section [and section 185.4 of this Part] 685 of the Tax Law, in the case of any underpayment of estimated tax by an individual, there shall be imposed an addition to the tax for the taxable year.

(ii) Such addition to the tax is determined by applying to the amount of the underpayment [(see subparagraph (2)(i) of this subdivision),] for the period of underpayment [(see subparagraph (2)(ii) of this subdivision)]:

“(a)” the applicable rate established under section 697(j) of article 22 of the Tax Law (see Part 2393 of this Title); or

“(b)” if no rate is set, the rate [of six percent per annum] specified in section 685(c)(1) of the Tax Law.

Section 8. Subdivision (a) of section 415.6 of such regulations is amended to read as follows:

(a) Pursuant to the provisions of subdivision twenty-sixth of section 171 of the Tax Law, interest on overpayments of tax will be paid by the Department of Taxation and Finance [as described in this section]. Interest is computed and compounded daily[,] at the overpayment rate set by the Commissioner of Taxation and Finance. Interest will not be paid if the amount thereof is less than one dollar. Moreover, interest will not be paid on any refund, credit, or reimbursement of tax[,] unless provisions therefor are specifically provided in

section 289-c of the Tax Law. [For the rate of interest applicable to overpayments on which interest is payable for any period of time prior to September 1, 1989, see section 2393.2 of this Title.] For information regarding the overpayment rate of interest [applicable to any period or periods on or after September 1, 1989], see [section 2393.1(e)] Part 2393 of this Title.

Section 9. Paragraphs (1) through (3) and the example in subdivision (a) of section 416.4 of such regulations are REPEALED, and subdivision (a) is further amended to read as follows:

(a) In lieu of the penalties described in section 416.1 and the interest described in section 416.6 of this Part, if the failure to pay any tax on or before the prescribed date for payment is attributable to fraud, [there] the penalty and interest prescribed in section 289-b(1)(d) of the Tax Law will be added to the tax[:].

Section 10. Subdivision (b) of section 416.4 of such regulations is REPEALED, and subdivision (c) of such section is relettered subdivision (b).

Section 11. Subdivision (b) of section 416.6 of such regulations is amended to read as follows:

(b) The underpayment rate of interest is set by the Commissioner of Taxation and Finance pursuant to the provisions of subdivision twenty-sixth of section 171 of the Tax Law[, but shall not be less than six percent per annum]. Such rate will apply to the tax or any portion thereof [which] that remains or becomes due on or after the date on which such rate becomes effective and applies only for the period during which such rate is in effect. [For the rate of interest applicable to underpayments on which interest is payable for any period of time prior to September 1, 1989, see section 2393.2 of this Title.] For information regarding the underpayment rate of interest [applicable to any period or periods on or after September 1, 1989], see [section 2393.1(e)] Part 2393 of this Title.

Section 12. Section 487.4 of such regulations is amended to read as follows:

Section 487.4 Refunds. (Tax Law, sections 513, 1096) The Department of Taxation and Finance is

authorized to refund or credit, [without] with interest, any money paid in error under article 21 of the Tax Law. All claims for refund should be made on a form prescribed by the department for such purpose. [Such] A claim for refund or credit must be filed within [two] four years from the time that the erroneous payment was made or as otherwise provided in section 513 of the Tax Law. [For the rate of interest applicable to overpayments on which interest is payable for any period of time prior to September 1, 1989, see section 2393.2 of this Title.] For information regarding the overpayment rate of interest [applicable to any period or periods on or after September 1, 1989], see [section 2393.1(e)] Part 2393 of this Title.

Section 13. Paragraphs (1) through (3) and the example in subdivision (a) of section 488.3 of such regulations are REPEALED, and subdivision (a) is further amended to read as follows:

(a) In lieu of the penalty described in section 488.1 and the interest described in section 488.4 of this Part, if the failure to pay any tax on or before the prescribed date for payment is attributable to fraud, [there] the penalty and interest prescribed in section 512(1)(d) of the Tax Law shall be added to the tax[:].

Section 14. Subdivision (b) of section 488.3 of such regulations is REPEALED, and subdivision (c) of such section is relettered subdivision (b).

Section 15. Subdivisions (b) and (c) of section 488.4 of such regulations are amended to read as follows:

(b) The underpayment rate of interest is set by the Commissioner of Taxation and Finance pursuant to the provisions of subdivision 26th of section 171 of the Tax Law[, but shall not be less than six percent per annum]. Such rate will apply to the tax or any portion thereof [which] that remains or becomes due on or after the date on which such rate becomes effective and applies only for the period during which such rate is in effect. [For the rate of interest applicable to underpayments on which interest is payable for any period of time prior to September 1, 1989, see section 2393.2 of this Title.] For information regarding the underpayment rate

of interest [applicable to any period or periods on or after September 1, 1989], see [section 2393.1(e)] Part 2393 of this Title.

(c) For information concerning the applicable rate of interest for a given period, see [section 2393.2] Part 2393 of this Title. Interest is determined, assessed, collected, and paid in the same manner as the taxes imposed by article 21 of the Tax Law. Interest is not due if the amount thereof is less than one dollar.

Section 16. Paragraph (2) of subdivision (e) of section 534.2 of such regulations is amended to read as follows:

(2) Allowance of interest. Interest [may] will only be allowed and paid on refunds or credits [granted pursuant to] as specifically provided in section 1139 or elsewhere in articles 28 and 29 of the Tax Law [and described in subdivisions (a) and (b) of sections 534.8 and 534.9 of this Part].

Section 17. Paragraph (3) of subdivision (e) of section 534.2 of such regulations is REPEALED.

Section 18. Subdivision (b) of section 536.1 of such regulations is amended to read as follows:

(b) "Interest." If any amount of tax is not paid on or before the last date that payment is required, interest shall be paid on such unpaid amount at the rate [of 12 percent per annum] specified in section 1145(a)(1)(ii) of the Tax Law or at the underpayment rate set by the Commissioner of Taxation and Finance [in] (see Part 2393 of this Title) pursuant to section 1142(9) of the Tax Law, whichever is greater. Interest shall be paid for the period from the last date payment is required to the date that payment is made, whether or not any extension of time for payment was granted. Interest shall not be paid if the amount thereof is less than [\$1] one dollar.

Section 19. Subdivision (c), excluding the cross-reference and examples which remain unchanged, of section 536.1 of such regulations is amended to read as follows:

(c) If a person required to collect tax can establish that the failure or delay to file a return or to pay or pay over any tax was due to reasonable cause and not due to willful neglect[, as defined in] (see section 2392.1

of this Title), all of such penalty and that portion of the interest [which] that exceeds the amount that would be payable if such interest were computed at the underpayment rate set by the Commissioner of Taxation and Finance [in] (see Part 2393 of this Title) pursuant to section 1142(9) of the Tax Law shall be waived.

Section 20. Subdivision (d) of section 536.1 of such regulations is amended to read as follows:

(d) "Rate of interest imposed." [The] Except as provided in subdivision (b) of this section, the amount of interest to be added to taxes [which become] that are underpaid or overpaid shall be based on the interest rates set [forth in] by the commissioner (see Part 2393 of this Title) that are in effect while such taxes remain underpaid or overpaid.

Section 21. Subdivision (f), including the example and cross-reference, of section 536.1 of such regulations is REPEALED.

Section 22. The heading of section 536.2 of such regulations is amended to read as follows:

Section 536.2 [Penalties and interest] Penalty for substantial [understatement] omission of tax. (Tax Law, section 1145(a)(1)(vi))

Section 23. Subdivisions (a) through (d) and the cross-reference in section 536.3 of such regulations are REPEALED, and section 536.3 is further amended to read as follows:

Section 536.3 Penalties and interest for fraud. (Tax Law, section 1145(a)(2)) When the failure to pay or pay over any tax to the Department of Taxation and Finance within the time required [by Part 533 of this Title] is due to fraud, in lieu of the penalties and interest provided for in section 536.1(a) and (b) of this Part, [there] the penalty and interest prescribed in section 1145(a)(2) of the Tax Law shall be added to the tax[:].

Section 24. Section 536.4 of such regulations is no longer RESERVED, and a new section 536.4 is added to read as follows:

Section 536.4 Additional penalties. For additional penalties, see section 1145 and article 37 of the Tax



Law.

Section 25. Section 536.6 of such regulations is REPEALED.

Section 26. Paragraph (4) of subdivision (e) of section 561.10 of such regulations is amended to read as follows:

(4) For information concerning the overpayment rate of interest, see [section 2393.4] Part 2393 of this Title.

Section 27. Subdivision (d) of section 575.16 of such regulations is amended to read as follows:

(d) Interest amounting to one dollar or more shall be allowed upon any refund. Interest at the overpayment rate shall be paid from the date when the tax, penalty, or interest refunded was paid to a date preceding the date of the refund check by not more than thirty days. For purposes of this subdivision, any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day. For the overpayment rate of interest [applicable to any period or periods on or after July 1, 1989], see [section 2393.7] Part 2393 of this Title.

Section 28. Subdivision (b) of section 575.20 of such regulations is amended to read as follows:

(b) For the underpayment rate of interest [applicable to any period or periods on or after July 1, 1989], see [section 2393.7] Part 2393 of this Title. Interest of less than [\$1.00] one dollar will not be paid.

Section 29. Part 2393, with the exception of paragraph (1) of subdivision (e) of section 2393.1, of such regulations is REPEALED.

Section 30. Paragraph (1) of subdivision (e) of section 2393.1 of such regulations is renumbered to be Part 2393 and amended to read as follows:

PART 2393

OVERPAYMENT AND UNDERPAYMENT RATES OF INTEREST

(Statutory authority: Tax Law, section 171)

Sec.

2393.1 Overpayment and underpayment rates of interest

Section 2393.1 Overpayment and underpayment rates of interest. [(e)(1) Notwithstanding subdivisions (a) through (d) of this section and except] Except as otherwise provided [in paragraph (5) of this subdivision] by law, [beginning September 1, 1989 all] interest rates used in computing the [amount] amounts of interest to be paid on overpayments [(if any)] or imposed on underpayments and [recovery] recoveries of erroneous refunds of any [tax] taxes imposed by or pursuant to the authority of the Tax Law, or any other [tax] taxes administered by the Commissioner of Taxation and Finance, [will be] are set by the commissioner on a quarterly basis without promulgation by regulation [of the Commissioner of Taxation and Finance (see chapter 61 of the Laws of 1989)]. The interest rates set by the commissioner [will be] are published in the section for miscellaneous notices in the “New York State Register,” and notice thereof [will be] is given by other appropriate means (e.g., posting on the department’s Web site), no later than 20 days preceding the first day of the calendar quarter during which such interest rates apply. [See generally subdivision twenty-sixth of section 171 and section] Such rates are prescribed in sections 697(j) and 1096(e) of the Tax Law[,] and in section 11-1797(j) of the Administrative Code of the City of New York. Reference to taxes in this section includes special assessments, fees, and any other impositions that are administered by the commissioner.

Section 31. Subdivisions (a), (b), (c), and (e) of section 2395.1, of such regulations are REPEALED, and subdivision (d) of such section is amended to read as follows:

[(d) Notwithstanding subdivisions (a), (b) and (c) of this section, beginning September 1, 1989] For purposes of section 924-a of the Real Property Tax Law, the rate of interest applicable to the third calendar quarter of each year as set on or before the fifteenth day of July in each year by the Commissioner of Taxation

and Finance pursuant to section 697(j) of the Tax Law shall, except as otherwise provided [in this subdivision] by law, be the rate of interest for the collection period commencing on or after the first day of September next succeeding the date the rate of interest is set. In no event shall the rate be less than [12 percent per annum. For warrants issued for a collection period commencing on or after September 1, 1989 and prior to September 1, 1990, the rate of interest set by the commissioner for the month of September, 1989 shall be deemed to be the rate of interest applicable to the third calendar quarter of 1989. For warrants issued for a collection period commencing on or after September 1, 1990 and prior to September 1, 1991, the overpayment rate of interest set by the commissioner pursuant to section 1096(e) of the Tax Law (see section 2393.1(e)(3) of this Chapter) for the third calendar quarter of 1990 shall be deemed to be the applicable rate of interest. In accordance with section 697(j) of the Tax Law,] the rate of interest [prescribed] specified by section 924-a of the Real Property Tax Law [regarding certain unpaid real property taxes will be]. The rate of interest is set without promulgation by a regulation of the Commissioner of Taxation and Finance. See [paragraphs (1) and (2) of subdivision (e) of section 2393.1] Part 2393 of this Chapter for further information regarding the rate of interest set under section 697(j) of the Tax Law.

Section 32. Paragraph (1) of subdivision (b) of section 2397.7 of such regulations is amended to read as follows:

(1) In the event that the penalty or penalties described in subdivision (g) of section 10 of the Tax Law have been imposed and it is later determined that any such failure was due to reasonable cause and not due to willful neglect, all of such penalties shall be waived, and in the case of [the penalties] interest imposed with respect to the sales and use taxes [described in] required to be remitted by electronic funds transfer pursuant to section [2397.2(a)(1)(i) and (ii) of this Part] 10 of the Tax Law, that portion of the interest [which] that exceeds the amount that would be payable if such interest were computed at the rate set by the commissioner [in]

pursuant to section 1142(9) of the Tax Law (see Part 2393 of this Title) shall also be waived. The absence of willful neglect alone is not sufficient grounds for not imposing or for cancelling such penalty or penalties, and interest.

Dated: Albany, New York  
February 11, 2010

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Jamie Woodward  
Acting Commissioner and Executive Deputy  
Commissioner of Taxation and Finance